

REMARKS

Favorable reconsideration is respectfully requested in view of the foregoing amendments and following remarks.

I. CLAIM STATUS & AMENDMENTS

Claims 1-7 were pending in this application when last examined.

Claims 1 and 4 have been examined on the merits and stand rejected.

Claims 2, 3 and 5-7 were withdrawn as non-elected subject matter.

Claims 1 and 4 are amended to delete “the fragment thereof” language and to remove the reference to Figs. 1-3 and to add the sequences (as identified by SEQ ID NO), which correspond to the sequences disclosed in Figs. 1-3. Support for this amendment can be found at pages 12-14, Figs. 1-3 and original claims 1 and 4.

The specification has been amended to update the continuation status of this application.

Therefore, no new matter has been added by this amendment.

II. CLAIM OBJECTIONS

In item 1 on page 2, claims 1 and 4 were objected to under M.P.E.P. § 2173.05(s) on the basis that the claims improperly make reference to Figs. 1-3.

It is respectfully submitted that the present amendment overcomes this objection for reason which are self-evident.

III. WRITTEN DESCRIPTION REJECTION

In item 2 on pages 2-4, claims 1 and 4 were rejected under 35 U.S.C. § 112, first paragraph, on the basis that the specification lacks written description support for the genus of genes and DNA fragments claimed. Specifically, it was noted that the terms “a gene regulating

aureobasidin sensitivity” and “a gene or fragment contained in a DNA fragment represented by a restriction enzyme map of Fig. 1 to Fig. 3” alone are insufficient to describe the genus.

This rejection is respectfully traversed as applied to the amended claims.

The claims have been amended to remove reference to “or fragment thereof” language and to recite the specific DNA sequences as supported by the disclosure at pages 12-14 and Figs. 1-3. In other words, the claims have been amended to remove reference to the claim language objected to by the Examiner. Accordingly, it is respectfully submitted that the amended claims are directed to the specific DNA sequences disclosed in the specification, and do not encompass the broad genus of genes and DNA fragments as asserted in the Action.

In view of this amendment, the rejection of claims 1 and 4 under 35 U.S.C. § 112, first paragraph, is untenable and should be withdrawn.

IV. INDEFINITENESS REJECTION

In item 3 on page 4, claim 1 was rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for “functional derivative.”

The present amendment obviates this rejection in that the claims have been amended to delete “functional derivative.” Therefore, the rejection of claim 1 under 35 U.S.C. § 112, second paragraph, is untenable and should be withdrawn.

V. ANTICIPATION REJECTION

In item 4 on pages 5-6, claims 1 and 4 were rejected under 35 U.S.C. § 102(e) as anticipated by Rogers US 5,268,285.

To anticipate a claim, a cited prior art reference must teach each and every element of the claimed invention. M.P.E.P. § 2131.01.

On page 5 of the Office Action, it was indicated that the claim language “fragment thereof” together with the open language of “comprising” encompasses any and every DNA molecule used to clone a gene. Based on this interpretation, Rogers was relied upon to anticipate the claimed invention.

As noted above, the claims have been amended to remove reference to “fragment thereof” language and to be directed to the specific DNA sequences of SEQ ID NOS: 15, 17, 19, 21 and 23.

It is respectfully submitted that Rogers fails to disclose or suggest the specific DNA sequences of the amended claims. Therefore, Rogers fails to teach each and every element in the claimed invention.

In view of the above, the rejection of claims 1 and 4 under 35 U.S.C. § 102(e) as anticipated by Rogers is untenable and should be withdrawn.

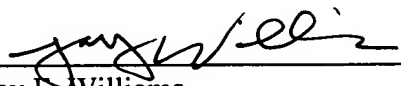
CONCLUSION

In view of the foregoing amendments and remarks, it is respectfully submitted that the present application is in condition for allowance and early notice to that effect is hereby requested.

If the Examiner has any comments or proposals for expediting prosecution, please contact the undersigned attorney at the telephone number below.

Respectfully submitted,

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